Supreme Court, U.S.
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No. 91-1837

In The Supreme Court of the United States

October Term, 1991

SCOTT MANATT,

Petitioner,

v.

ARKANSAS STATE BOARD OF ELECTION COMMISSIONERS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

WHETHER THE LOWER COURTS ERRED IN APPLYING THE LEGITIMATE GOVERNMENTAL INTEREST STANDARD, RATHER THAN THE OVERWHELMING GOVERNMENTAL INTEREST STANDARD, IN DETERMINING THE CONSTITUTIONALITY OF ARK. CODE ANN. §7-7-305(c) UNDER THE FOURTEENTH AMENDMENT EQUAL PROTECTION CLAUSE.

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CONSTITUTIONAL PROVISIONS:

Constitution of the United States, Amendment 14 2,3

STATUTORY PROVISIONS:

Ark. Code Ann. §7-7-305(c) 1,4,5

JURISDICTION

The Eighth Circuit Court of Appeals entered its Order affirming the District Court's decision on February 26, 1992. The Order Denying Petition for Rehearing was filed on April 8, 1992. Petitioner seeks review by this Court under Rule 10.1(c).

Respondent submits that this matter should not be reviewed on writ of certiorari. Rule 10.1(c), invoked by Petitioner as the basis for jurisdiction, provides that jurisdiction may be founded upon a decision by a United States Court of Appeals of an important question of federal law which has not been, but should be, settled by this Court; or has decided a federal question in a way that conflicts with applicable decisions of this Court. Because the Eighth Circuit Court of Appeals neither decided a question of federal law which has not been decided by this Court nor decided a federal question in conflict with applicable decisions of this Court, jurisdiction should not be exercised.

STATEMENT OF THE CASE

The question presented for review by the Petitioner is whether the lower Courts applied the proper standard of scrutiny under the Fourteenth Amendment in determining the constitutionality of Ark. Code Ann. §7-7-305(c).

Petitioner Scott Manatt is an attorney practicing law at Corning, Arkansas. He was a Republican candidate for a position on the Arkansas Supreme Court in the November, 1990, general election in Arkansas.

Prior to the election, on October 18, 1990, Petitioner filed a complaint in the U.S. District Court, Eastern District of Arkansas, against the Arkansas State Board of Election Commissioners, seeking declaratory relief and temporary and permanent injunctive relief. He alleged that two Arkansas statutes were unconstitutional as being in violation of the Voting Rights Act, 42 U.S.C. §1971-1974, and the Fourteenth Amendment to the United States Constitution. The Fourteenth Amendment claim was brought pursuant to 42 U.S.C. §1983.

The statutes challenged by Petitioner were Ark. Code Ann. §7-7-208(h) and Ark. Code Ann. §7-7-305(c). Ark. Code Ann. §7-7-208(h) provides that a candidate's party designation or the term "Independent" shall be placed beside the candidate's name on the general election ballot. Ark. Code Ann. §7-7-305(c) permits a candidate to use a nickname or professional title on the election ballot. (A-7). Petitioner contended that these statutes operated to discriminate against him as a member of the Republican party, the minority party in Arkansas, and as a non-judge. Petitioner now seeks review by this Court only of the lower Court decisions as to §7-7-305(c).

Petitioner lost the November 6, 1990, election to the incumbent, Democrat candidate. Prior to the election, on October 24, 1990, Petitioner filed a Motion for Temporary Restraining Order and Injunction, which was denied on October 25, 1990. Petitioner then filed a Notice of Appeal and Request for Expedited Appeal. An Order was entered on November 27, 1990, dismissing the appeal.

After a bench trial on July 1, 1991, an Order was entered by the District Court on July 2, dismissing the Complaint on the basis that no case or controversy had been presented and that Petitioner had failed to state a claim for relief under the Voting Rights Act and the Fourteenth Amendment. (A-4).

Petitioner filed a Notice of Appeal to the Eighth Circuit Court of Appeals, who affirmed the lower Court's decision. Regarding the Voting Rights Act claim, the Court held that incumbency status and party affiliation fail to state a claim under the Voting Rights Act. The basis for affirming as to the Fourteenth Amendment claim is that the State of Arkansas has a legitimate government interest in informing the voters of candidates' qualifications. (A-2).

The sole question for review is whether the lower Courts applied the correct standard in determining the Fourteenth Amendment issue regarding §7-7-305(c). Petitioner contends that a stricter standard should be applied, that is, the overwhelming governmental interest standard. Respondent's position is that the proper standard of review was applied.

Respondent will also argue that certiorari should be denied on the basis that this case neither presents an important question of federal law which should be settled by this Court

nor conflicts with any prior decisions of this Court under Rule 10.1(c).

SUMMARY OF THE ARGUMENT

Petitioner contends that this matter should be reviewed on writ of certiorari under Rule 10.1(c) because the lower Courts decided an important federal question which has not, but should be, decided by this Court; and that the lower Courts decided a federal question in a way that conflicts with *Anderson v. Martin*, 375 U.S. 399 (1964) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Respondent's position is that no important federal question was decided by the lower Courts which has not already been addressed in this Court. The District Court's decision, and the Eighth Circuit Court of Appeals' decision, both followed this Court's ruling in *Martin, supra*, with respect to Petitioner's Fourteenth Amendment claim, the only claim relevant to the question presented for review.

Regarding Petitioner's second contention, no issue was decided by the lower Courts in conflict with this Court's decisions in *Anderson v. Martin, supra*, or *Anderson v. Celebrezze, supra*. Petitioner cites *Celebrezze*, but offers no argument as to how an issue in the instant case was settled in conflict with this Court's ruling therein. With respect to Martin, again Petitioner offers no argument directly showing how the decision in the instant case conflicts with *Martin*.

With respect to Petitioner's contention that the lower Courts applied an erroneous standard, the legitimate governmental interest standard, in determining that Ark. Code Ann. §7-7-305(c) is not unconstitutional as being in violation of the Fourteenth Amendment Equal Protection Clause, Petitioner confuses the right to vote, a fundamental right, with the right to run for elective office. Because the issue is Petitioner's right to run for office, the Courts applied

the proper test in determining that a statute allowing candidates to use titles or nicknames on the ballot was in keeping with Arkansas' legitimate governmental interest in informing voters of candidates' qualifications.

ARGUMENT

I. THIS COURT LACKS JURISDICTION TO REVIEW THIS CASE ON WRIT OF CERTIORARI

The United States Supreme Court Rule invoked by Petitioner as conferring jurisdiction upon this Court is Rule 10.1(c), which provides that jurisdiction may be exercised "[W]hen a state court or a United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court." Petitioner argues both: (1) that the lower Courts decided a federal question which has not, but should be, settled by this Court, and (2) that the lower Courts decided a federal question in conflict with *Anderson v. Martin*, 375 U.S. 399 (1964) and *Anderson v. Celebrezze*, 460 U.S. 780 (1983).

Petitioner's first argument fails because no important question of federal law was decided by the lower Courts. With respect to Petitioner's claim under the Voting Rights Act, the lower Courts found that Petitioner lacked standing under the Act. The relevant allegation of Petitioner's complaint is that Ark. Code Ann. §7-7-305(c), which allows a candidate for office to use a nickname or title on the election ballot, violated Petitioner's rights as a candidate for public office in Arkansas. In November, 1990, Petitioner ran an unsuccessful race for a position on the Arkansas Supreme Court against an incumbent judge. He contends that Ark. Code Ann §7-7-305(c) was discriminatory against him because it allowed his opponent to preface his name with the "Judge" on the election ballot, creating an unfair advantage. The District Court held, and the Eighth Circuit Court of Appeals affirmed, that Petitioner

had failed to state a claim under the Voting Rights Act because only one whose voting rights have been denied or impaired has standing under the Act. In other words, the Act is limited to aggrieved voters and does not extend coverage to aggrieved candidates for office. See, *Roberts v. Wamser*, 883 F.2d 617 (8th Cir. 1989).

With regard to the claim relevant to the question for review, the Fourteenth Amendment claim, the courts below held that the practice of allowing nicknames or titles on the election ballot serves a legitimate governmental interest in informing the electorate as the candidates' qualifications. As the lower Courts were following this Court's decision in *Anderson v. Martin, supra*, there is no important question of federal law raised in these proceedings which has not already been addressed by this Court. Therefore, the Petitioner's first argument urging this Court's exercise of jurisdiction under Rule 10.1(c) fails.

Petitioner's second argument favoring jurisdiction is that the lower Court's decisions are in conflict with this Court's decisions in *Anderson v. Martin, supra*, and *Anderson v. Celebrezze*, 460 U.S. 780 (1983). A brief review of each of these cases reveals that there is no conflict between the lower Courts' rulings herein and the reference decisions of this Court.

In *Martin*, the issue was whether a Louisiana statute requiring racial designations of candidates on ballots was constitutional. The Court held that the requirement violated the Equal Protection Clause of the Fourteenth Amendment since a candidate's race does not bear upon his qualifications for office. The court reasoned that the provision could not "...be deemed to be reasonably designed to meet legitimate governmental interests in informing the electorate as to

candidates." *Martin* at 433. This language clearly indicates that provisions which are reasonably designed to meet legitimate governmental interests in informing voters as to candidates' qualifications would past constitutional muster. The District Court specifically found that the use of party designations and professional titles on ballots "meet[s] legitimate governmental interest in informing the electorate as to candidates." (A-6). The Eighth Circuit Court of Appeals affirmed, stating that "the State of Arkansas has a 'legitimate governmental interest in informing the electorate as to the candidates.'" (A-3). Clearly, there is no conflict between *Martin* and the lower Courts' rulings herein.

The issue in *Celebrezze* was the constitutionality of an Ohio statute requiring an independent presidential candidate to file a statement of candidacy in March in order to appear on the November general election ballot. The Court held that a state's legitimate interest in voter education did not justify the burdens on the candidate's Fourteenth Amendment rights and the voters' First Amendment right of association placed by the statute in question. The *Celebrezze* case is inapposite. There is no parallel between that decision and the case at hand. The Fourteenth Amendment issue in *Celebrezze* was whether it was justifiable to treat independent candidates differently from party candidates. Petitioner cites the case in the Jurisdiction section of the Petition, but advances no argument showing how it conflicts with the lower Court's decisions herein. Respondent submits that there is no conflict because the issues are different, and for that reason, jurisdiction by this Court should not be exercised over this matter.

II. THE LOWER COURTS APPLIED THE PROPER STANDARD OF SCRUTINY IN DETERMINING THE CONSTITUTIONALITY OF ARK. CODE ANN. §7-7-305(c).

The sole question on review is whether the lower Courts applied the proper standard, that is, the legitimate governmental interest standard, in determining the constitutionality of Ark. Code Ann. §7-7-305(c).

In contending that the overwhelming governmental interest standard should have been applied, Petitioner argues that the stricter standard is appropriate because the right to vote is a fundamental right. Respondent agrees that the right to vote is fundamental, but wishes to point out that the statute in question cannot be found to interfere with anyone's right to vote. Petitioner's complaint is, rather, that the provision interferes with his right to run for elective office. No authority is presented to show that running for office is a fundamental right, because there is no such authority.

Petitioner argues that the statute gives an unfair edge to an incumbent because it entitles him to run as "Judge" whereas the challenger cannot use such a title. He claims that this results in impermissible "vote dilution."

A recent decision of this Court reveals that Petitioner has not stated a claim for vote dilution. In *Thornburg v. Gingles*, 478 U.S. 30 (1986), the issue was whether certain multimember legislative districts in North Carolina impaired the ability of black voters to elect representatives, in violation of §2 of the Voting Rights Act. In *Thornburg*, the Court analyzes and discusses at length the factors in determining whether a vote dilution claim exists. Such a claim is based

upon allegations of dilution of minority voting strength. Vote dilution refers to the impermissible discriminatory effect that a multimember or other district plan has when it operates to cancel out or minimize the voting strength of racial groups. See, *McNeil v. Springfield Park District*, 851 F.2d 937, (7th Cir. 1988). Receiving fewer votes than one's opponent does not constitute having one's vote "diluted." If this were the case, any losing candidate could assert a claim under the Voting Rights Act by contending that the loss was a result of unconstitutional "vote dilution."

Petitioner has mischaracterized the right sought to be protected in order to qualify for a stricter standard of scrutiny. Clearly, his complaint goes to his right to run for elective office rather than his right to vote. Because no fundamental right was involved, the District Court's application of the legitimate governmental interest test, rather than a stricter standard, was appropriate in determining that §7-7-305(c) permissibly serves to inform the electorate as to candidates' qualifications.

III. CONCLUSION.

For the reasons states in this brief, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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